

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

BILLY GRANTHAM,	:	
	:	
Plaintiff	:	C.A. No. 07-6816 (HB)
	:	
v.	:	
	:	PLAINTIFF’S ASSENTED-TO
BRISTOL-MYERS SQUIBB COMPANY,	:	MOTION TO SUBSTITUTE
	:	
Defendant.	:	(Assigned to the Honorable
	:	Harold Baer, Jr.)
	:	
	:	

COMES NOW the Estate of Plaintiff, Billy Grantham by and through undersigned counsel, to request pursuant to Fed. R. Civ. P. 25 (2007), the substitution of the Estate of Billy Grantham for Plaintiff Billy Grantham in this matter. Plaintiff's counsel has conferred with Defendant regarding this motion to substitute and Defendant assents to Plaintiff's motion.

Pursuant to Fed. R. Civ. P. 25 in the event of the death of a party the Court may order substitution of the proper parties if the claim is not extinguished by the death. Additionally, the motion for substitution may be made by any party, or the successors or representatives of the deceased party. Fed. R. Civ. P. 25 (a)(1).

On August 31, 2007, Plaintiff Billy Grantham died. (See Ex. 1, Death Certificate.) Under Florida law death does not extinguish any of Mr. Gratham’s claims. (See Exs. 2-3, Fla. Stat. § 46.021 (2007) (“[n]o cause of action dies with the person”) and *Bohannon v. McGowan*, 222 So. 2d 60, 61 (Fla. Ct. App. 1969) (holding that “all causes of action survive

[the death of a Plaintiff]”).) Plaintiff Billy Grantham appointed Patricia A. Grantham as personal executive of his estate. (See Ex. 4, Article VIII of The Last Will and Testament of Billy Mack Grantham.) On behalf of both the Plaintiff and the Estate of the Plaintiff, undersigned counsel moves the Court to substitute the Estate of Billy Grantham for Billy Grantham as Plaintiff in this matter.

ESTATE OF BILLY GRANTHAM,

/s/ Donald Andrew St. John

David S. Nalven, DN-2374

Kimberly A. Dougherty (*Pro Hac Vice*)

HAGENS BERMAN SOBOL SHAPIRO LLP

One Main Street, 4th Floor

Cambridge, MA 02142

Telephone: (617) 482-3700

Facsimile: (617) 482-3003

Robert B. Carey (*Pro Hac Vice*)

Donald Andrew St. John (*Pro Hac Vice*)

HAGENS BERMAN SOBOL SHAPIRO LLP

2425 E. Camelback Road, Suite 650

Phoenix, Arizona 85016

Telephone: (602) 840-5900

Facsimile: (602) 840-3012

Attorneys for Plaintiff

ASSENTED TO:

/s/ Matthew J. McCauley

David M. Covey

Barry L. Gerstman

Matthew J. McCauley (MM-9610)

SEDGWICK, DETERT, MORAN & ARNOLD LLP

125 Broad Street, 39th Floor

New York, New York 10004-2400

Telephone: (212) 422-0202

Facsimile: (212) 422-0925

Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Donald Andrew St. John, hereby certify that I am one of Plaintiff's attorneys and that, on January 8, 2008, I caused copies of the papers annexed hereto to be served on all counsel of record in this proceeding via CM/ECF filing and email.

David Covey
david.covey@sdma.com

Matthew McCauley
matthew.mccauley@sdma.com

Barry Gerstman
barry.gerstman@sdma.com

/s/ Donald Andrew St. John